



IN THE HIGH COURT OF SIKKIM
ORDER SHEET

.....Writ Petition.....No. 16 of 2007
ALCHEMIST LTD. & ANR. Petitioner / Appellant
Versus
STATE BANK OF SIKKIM & ORS. Respondent

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
01.	13.08.07	Present: Mr. N.G. Sherpa, Advocate for the Petitioners. Mr. S.P. Wangdi, Advocate General with Mr. J.B. Pradhan and Mr. Karma Thinlay, Government Advocates for the State-Respondents. ... This is a Single Bench matter. By consent, adjourned to 17.09.2007.  (Ajoy Nath Ray) Chief Justice	



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02.	17.9.07	Present: Mr. P.C. Sen and Mr. Ranjan Deb, Senior Advocates with Mr. Arijit Banerjee, Mr. Rohitendra Ch. Deb, Bar-at-Law, Mr. B.P. Subba and Mr. Kirit Zaveri, Advocates for the Petitioners. Mr. S.P. Wangdi, Advocate General with Mr. J.B. Pradhan and Mr. Karma Thinlay, Government Advocates for the State-Respondents ... This is a writ petition at the initial stage and today is the first day when the case has been presented. However, the matter has been argued at length since the very admission of a writ petition of the present nature is fraught with consequences, and those consequences would visit, in this case, no less an organization than the State Bank of Sikkim itself. The writ petitioner Alchemist is desirous ultimately of becoming a strategic partner of the State Bank of Sikkim. It appears to be an extremely startling proposition, unknown anywhere else in India for so long, in regard to any of the other nationalized banks which have now existed as such for a long	

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		time. Not only has no private party or organization become a strategic or an important partner of any such other nationalized bank, there has not been any writ or suit for specific performance in that regard yet, to the best of this Court's knowledge or that of learned counsel appearing today, as on date. The basic facts are these. Before the take over of the State of Sikkim by the Union of India in 1975, sometime in or about the year 1968 there was a Proclamation by the then Ruler namely, "The Chogyal", which is entitled the State Bank of Sikkim Proclamation, 1968. The Proclamation is just like a State Act and runs into 47 sections. It has now become a State Act by operation of law. Sometime on or about the 21st of January 2004, the State Bank of Sikkim issued a notice inviting offers for a joint venture. No doubt, the whole thing was started by the State Bank itself on its own initiative at that time. The advertisement stated that the Bank was looking for a suitable strategic business partner who was	

willing to enter into a joint venture through 'huge

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		investments', bringing in competent management, introducing major reforms etc. The last sentence of that notice read as follows: - “The offers made by the parties shall be subject to scrutiny by the Board of Directors and it reserves the right to accept or reject offers without assigning any reason.” Sometime in the month of February 2004, offers came from the writ petitioners and they have been willing to infuse large sums of money of the order of Rs.400-500 crore in the joint venture. Some Fixed Deposit Receipts of that time and of that amount were also produced then, but those ^{now} ~~new~~ have been encashed by the writ petitioner and no money of theirs is blocked up in any manner now. In the month of February 2004 itself, the State Bank of Sikkim wrote to the writ petitioner accepting in principle their offer of being in joint venture with the bank. The manner in which the writ petitioner wanted to come into the bank was as follows. The State Government holds ^{in the bank} the majority shares, i.e.,	
		appreciably above 50 %. Some 36 % shares of the	



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		bank, of the face value of Rs.100 per share are still unsubscribed. This 36 % block the Alchemist would purchase ^{comparatively very small} for a sum of Rs.36 lakh approximately. This purchase of the share block and the investment of the aforesaid cash amount in the manner delineated by the Alchemist, these were the basics of the proposed joint venture ~~event~~ ^{agreement}. Parties were not simply writing letters, but there was certainly a good degree of seriousness about the transaction and a possibility of the whole thing ripening ultimately into a full fledged executed transaction. But a lot of steps were still to be taken, like finalizing the agreements in all its details, signing it, and, above all, obtaining the State Government's full approval in the matter, with the Legislature bringing in the changes, if any needed, in the Bank's Charter, which is the said Proclamation of 1968. In March 2005, a team from the Bank of Sikkim paid about a four-day visit to the writ petitioners' main place of business at Chandigarh	

and an inspection was made about the possible

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		future partner of the bank and its business and standings. After the team returned to Sikkim, nothing further happened. The next important document, which is the most important document challenged by the writ petitioner in this writ petition, was thereafter written about a year later, on the 23rd day of February 2006. It is a short letter of about 7-8 lines stating simply that the bank was withdrawing from the earlier plan of strategic partnership as the State Government of Sikkim had not approved the bank's recommendation. The writ petitioner had filed a writ in the High Court of the Punjab & Haryana. That writ petition was dismissed for lack of jurisdiction. An SLP was preferred to the Supreme Court of India and that Court was pleased to pass on the 4th day of December 2006 an order allowing filing of counter affidavit and restraining till the next day of hearing creation of any 3rd party interest in respect of the shares.	

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	AR	The SLP was disposed of thereafter on 16.03.2007 and the Supreme Court was pleased to hold that the Punjab & Haryana High Court was right on the point of jurisdiction and thus, the SLP was dismissed on that issue. The party has thereafter travelled to the High Court of Sikkim, which certainly has jurisdiction in this writ matter, provided ~~if~~ it is appropriately the subject matter of a writ petition at all. These matters relating to writs are usually heard here by a Division Bench, but since an assembly of such a Bench might take some more time, and the matter is quite urgent and important, this order is being passed by me sitting singly. The principal point urged by Mr. Sen in support of the writ petition was that a State or other authority or a public body like the State Bank of Sikkim cannot deal with citizens or the companies of citizens in unreasoned or unfair	



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		ways, which ways can perhaps be adopted with impunity by private businessmen. According to Mr. Sen, the cryptic withdrawal of 23.2.2006 was not informed by reason. The writ petitioner was not taken into confidence by the bank. No hearing was given. Nothing is known by the writ petitioner as to why, or if at all, the State Government refused to grant sanction. No opportunity was given to the writ petitioner to try and to persuade these authorities to go ahead with the agreement or to review its decision of dropping the partnership proposal altogether. According to Mr. Sen, these are, in the present state of the law, all sound and good points for entertainment of the writ petition and calling for an answer both from the State of Sikkim and the State Bank of Sikkim. On behalf of these two authorities, the learned Advocate General has argued the case and he has submitted that the case should be dismissed in limine.	

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		He has said that it is not an area where natural justice, hearing of parties, or taking them into confidence or giving a reasoned decision can operate at all. According to him, the proposed joint venture agreement would wholly alter the character of the State Bank of Sikkim as now entrenched by an enactment. No Writ Court can direct a State Government to alter any Legislation by passing an order of mandamus to that effect. If the proposed agreement of the writ petitioner is enforced by this Court, a huge percentage of share holding would go over to the writ petitioner making the passing of any special resolution impossible in future without their consent and approval. The agreement seeks to provide for managerial control by the writ petitioner and it would be a takeover of the management, for all practical purposes, from the State by the private individuals. Three Directors would be of the private body and two of the State. The Managing Director would be nominated by the writ petitioner.	

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		The learned Advocate General submitted that the proposals of this type are not acceptable. If accepted, the State Bank of Sikkim, with all its money holdings of small and big investors in Sikkim, would be selling it out to some private business firm, admitting even that the business firm is rich and powerful. But this sell out is not politically supported by the State of Sikkim and its ruling Government and these matters are on a plane higher than the plane where natural justice operates. On this type of policy or political issue, the State Government need give only that hearing, or even no hearing, as it deems politically expedient. Any hearing apart from this would be an empty formality, which the law does not require to be observed. In my opinion the learned Advocate General is so right, that no question of admission of this writ petition arises. It is my further opinion that in matters of admission of writ petitions, the Courts should be extremely careful on the very first day and, though paradoxically, much less care is needed on subsequent days than on the	

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		first day. As soon as there is an admission the Court pronounces either expressly or by necessary implication a case to go to trial, or, a case for a hearing, which might be a better word in regard to writ petitions. Affidavits are an automatic consequence. Disclosure of numerous matters would have to be made on affidavits, because of the ingrained principle that all litigants must come before the Court with full and complete disclosure of all material matters in their special knowledge. The doctrine of lis pendens and those of a similar nature would immediately operate. Whether there is an order of injunction or not, if litigation is pending in the highest Court of the State, everything is put under a brake. This is the reason why, before a notice is issued in this matter to ^{the} ~~this~~ / ^{or the State} State / Bank of Sikkim at the instance of a rich and powerful business house, it is essential for the Court to see that there are substantial and good reasons for issuance of rule, and at least a likelihood that ultimately the grievance of the writ petitioner might ultimately be redressed by the writ Court.	

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		Apart from what has been said above, this type of redressal can never be had from the Writ Court in a matter like this. If the writ is merely a clothing for covering up a suit for specific performance for selling of shares to the writ petitioner, then for reasons which it is not necessary to mention in any great detail, the writ is not an appropriate remedy. It has to be by way of suit because the matter sounds in contract, and in private business relationships, as between two ordinary parties; whether one of those two parties is also a State or other authority, is not of much significance in a pith and substance commercial business situation like this. Furthermore, a mandamus, which is an order of positive injunction in exercise of the high prerogative powers wielded by the writ Court, for enforcing the entering into of a partnership simply does not lie. Nobody can force another to take him in as a partner in his business venture, for however short a time might it be. Partners have to repose in one another confidence, which is of the essence in all relationships of partnership, and	

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		a specific performance cannot be had, of merely an agreement "in principle" of entering into a partnership. It lacks certainty, and it also lacks the subject matter or the content, which a Court can ever specifically enforce upon a party, whether that other party is willing or not. For these reasons, I am of the clear opinion that the writ petition is not entertainable. There is no claim for damages made in the writ petition, but if the writ petitioner is desirous of filing any suit for damages or any suit in the private sphere for enforcing any agreement or relationship in the nature of an agreement, the writ petitioner will be wholly free in that regard and nothing said herein will prejudice his rights or contentions there. The writ petition is dismissed in limine as not entertained. There will be no order as to costs. <i>A.N. Ray</i> (A.N. Ray, CJ)	